IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 13523 OF 2000
With
SPECIAL CIVIL APPLICATION NO.13532 OF 2000
With
SPECIAL CIVIL APPLICATION NO. 1649 OF 2001
With
CIVIL APPLICATION NO. 6710 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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RAMSARANSINGH BABULAL - Petitioner(s)
Versus
GENERAL MANAGER (E) & ORS. - Respondent(s)

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Appearance :
Shri D.P. Vora for Petitioner(s).
Shri Mukesh A. Patel for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/07/2007

COMMMON ORAL JUDGMENT

Each of the petitioners, being aggrieved by the award dated 28th June, 1999 passed by the learned Industrial Tribunal, Ahmedabad in Reference (ITC) Nos.4, 5 and 6 of 1993, is before this Court with a submission that the learned Tribunal was absolutely unjustified in not granting the back-wages from the date of termination till the date of reinstatement.

2. Shri Vora, learned Counsel for the petitioners, submits that the petitioners were accepted as temporary employees and without following the provisions of the Industrial Disputes Act, 1947, their services came to be terminated on 20th June, 1986. He submits that the order of termination/illegal retrenchment came to be challenged before the learned Central Administrative Tribunal and after finding that the petitions before the learned Central Administrative Tribunal would not be maintainable, the same were withdrawn and the dispute was raised before the appropriate Government. He submits that the appropriate Government referred the dispute for adjudication to the learned Industrial Tribunal on 28th December, 1992. According to him, the back-wages should always follow the reinstatement unless there are strong reasons for rejection of the relief.

3. Shri Mukesh Patel, learned Counsel for the respondents,

fairly submits that the relief of reinstatement was challenged by the respondents before this Court, but, all the Writ Applications came to be dismissed, therefore, the question of reinstatement is not in issue. He, however, submits that the learned Industrial Tribunal had jurisdiction to award or reject the prayer for grant of the back-wages. He submits that unless the Court holds that the discretion was illegally exercised in the proceedings under Article 227 of the Constitution of India, the Court should not interfere.

4. During the course of the arguments, Shri Vora, learned Counsel for the petitioners, however, submitted that looking to some delay on the part of the petitioners, they would not be entitled to the back-wages from 20th June, 1986 upto 28th December, 1992, but, in any case, after the references were registered, the matter was not in the hands of the petitioners and could be decided by the learned Tribunal only. He submits that by approaching the learned Industrial Tribunal, the petitioners had shown their willingness and readiness to work and under the circumstances, for the period *pendente lite*, the petitioners would be entitled to 100% back-wages.

5. The only question for consideration before this Court would be that whether the petitioners are entitled to the back-wages from the date of the reference and if yes, to what extent.

6. Undisputedly, three matters were referred by the Government to the learned Tribunal on 28th December, 1992. Once a matter comes to the Court or the Tribunal, then, the party is not in a position to compel a particular Judge or the Presiding Officer to take up the matter and decide the same at its earliest. Even though the Court or the Tribunal wants to decide the matter at its earliest, pressure of work, non-availability of infrastructure and non-availability of other facilities may hamper the work and may some time cause hindrance in disposal of the matters in a swift manner. Adjustments by the lawyers, leaves by the Presiding Officers/Judges and overburdened Courts are such reasons for adjournments. Once the adjournments are granted, then, the party can only be held liable if it concedes to unnecessary adjournments. Even otherwise, pendency of the matter before the competent Court/Tribunal would not lead to negation of the rights of the party. In the present case, undisputedly, the references were received by the learned Tribunal on 28th December, 1992 and it took the learned Tribunal almost about six and half years to decide the references. This delay of six and half years can be mostly attributed against the Court and partly against the parties. Under the circumstances, 100% back-wages if could not be awarded, at least 50% of back-wages ought to have been awarded in favour of the petitioners.

7. Maintaining the award of reinstatement, I set aside the direction in relation to non-grant of the back-wages, but, hereby direct that each of the petitioners would be entitled to 50% of back-wages with effect from 28th December, 1992 upto the date of the award.

8. Each of the petitions is partly allowed. Rule is made absolute to the aforesaid extent. No costs.

9. In view of disposal of the main writ petitions, Civil Application No.6710 of 2005 is disposed of accordingly.

Direct Service is permitted.

[R.S.Garg, J.]

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